IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 8185 of 2007(Y)

PETITIONER:

K.S.MOHAMMED MAHIN, AGED 35 YEARS,
S/O. SAIFUDEEN K., RESIDING AT KOLIKARA HOUSE,
FORT ROAD, KASARGOD (PROPRIETOR, KOLIKARA SALES CORPORATION, KASARAGOD).

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS:
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1. ASSISTANT GENERAL MANAGER (MARKETING),
OFFICE OF THE GENERAL MANAGER, BSNL, KANNUR.

2. GENERAL MANAGER, BSNL,
THAVAKKARA, KANNUR - 2.

3. PROPRIETOR, Y.M.TRADE LINKS,
OPPOSITE CTM PETROL PUMP, PRESS CLUB JUNCTION, KASARGOD.

4. LINKWELL TELE SERVICES
REPRESENTED BY ITS MANAGING PARTNER, HORIZON TRADE CENTER, MAIN ROAD, UPPALA, KASARGOD DISTRICT

ADDL.R5. THE EVALUATION COMMITTEE FOR THE PURPOSE OF SELECTION OF FRANCHISEE OF BSNL, OFFICE OF THE GENERAL MANAGER, BSNL, KANNUR-2

(ADDL.R5 IMPLEADED AS PER ORDER DT.4.4.07 ON IA 4688/07)

BY ADV. SRI.V.R.KESAVAKAIMAL, SC, BSNL
SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.M.RAMESH CHANDER
SRI.MATHEWS K.PHILIP, SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.8185/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE RELEVANT PORTIONOF THE TENDER NOTICE DT.29/11/06.

EXT.P2: TRUE COPY OF THE ANNEXURE F INDICATING THE AREAS WHERE FRANCHISEES ARE REQUIRED TOBE APPOINTED.

EXT.P3: TRUE COPY OF THE TENDER DOCUMENTS SUBMITTED BY THE PETITIONER IN REGARD TO SERIAL NO.1.

EXT.P4: TRUE COPY OF THE LETTER DT.22/1/2007 REQUIRING THE PETITIONER TO PRODUCE ANNUAL AUDITED REPORT FOR THE YEAR 2005-06.

EXT.P5: TRUE COPY OF THE REPLY DT.22/1/2007.

EXT.P6: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AUDITOR.

EXT.P7: TRUE COPY OF THE NOTICE DT.20/2/07 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBITS OF R3

EXT.R3(A): TRUE COPY OF THE AGREEMENT EXECUTED ON 5/3/07.

EXHIBITS OF R4

EXT.R4(a): PHOTOCOPY OF LETTER OF INTENT DT.27/2/07.

EXT.R4(b): PHOTOCOPY OF BANK GUARANTEE EXECUTED BY THIS RESPONDENT IN FAVOUR OF RESPONDENTS.

EXT.R4(c): PHOTOCOPY OF FORM OF FRANCISEESHIP AGREEMENT DT.2.3.07.

EXT.R4(d): PHOTOCOPY OF WORK ORDER DT.3.3.07 ISSUED BY 1ST AND 2ND RESPONDENTS.

EXT.R4(e): PHOTOCOPY OF CERTIFICATE ISSUED UNDER THE INCOME TAX ACT.

EXT.R4(f): PHOTOCOPY OF CERTIFICATES SHOWING RESPONDENT AND RAGHYNATH K.A. WORKING AS MARKETING AGENTS IN KERALA CIRCLE DURING 2001-03 AND SRI.MURALI NAMBIAR, MARKETING AGENT FOR KANNUR SSA SINCE 2002 ALONG WITH THEIR EXPERIENCE FROM 2001 ONWARDS.

EXT.R4(g): POTOCOPY OF CERTIFICATE SHOWING THIS RESPONDENT IS RECEIVING COMMISSION FROM 2001 ONWARDS.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 8185 OF 2007 Y
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Dated this the 9th day of October, 2007

J U D G M E N T

The prayer in this writ petition is to quash Ext.P1 and the selection of respondents 3 and 4 as franchisee of BSNL in pursuance to Ext.P1 tender notice. Petitioner is also seeking other consequential reliefs.

2. Ext.P1 is a notice published by the BSNL inviting applications for appointment as franchisee for sales and distribution and after sales customer care of BSNL in different areas.

3. In this writ petition, the challenge is in relation to the appointment of 3rd and 4th respondents in Kasargod and Uppala areas. The main contention raised by the learned counsel for the writ petitioner is that the Evaluation Committee constituted in terms of Ext.P1 did not evaluate the merits of respondents 3 and 4.

4. In so far as the 4th respondent is concerned, it is

submitted that it is a partnership firm. According to the learned counsel for the writ petitioner, at the time when the bid was submitted, one Sri.Murali was the Managing partner of the firm and he did not satisfy the eligibility conditions laid down in Ext.P1. It is also submitted that the firm did not have the experience prescribed in Ext.P1 and therefore was ineligible to be appointed as franchisee. However records reveal that the last date of submission of bids in response to Ext.P1 was 22/12/2006 and before that, partnership deed was amended on 18/12/06 and one Sri.Sajith Kumar K.K. was appointed as the Managing partner. He individually had satisfied the eligibility conditions including experience and therefore, it is pointed out that when the bid was submitted, the Managing partner was an eligible candidate.

5. In so far as the contention that the 4th respondent was inexperienced, it is pointed out that Sri.Sajith Kumar individually had satisfied the experience prescribed in Ext.P1. Even otherwise, during the period when he acquired the experience, he was also a partner of the 4th respondent firm. It is settled law that in

respect of a company or a partnership firm, when experience of the firm or the company is reckoned, the experience of the persons who constitute the firm or the company can be counted and given credit. If that principle is applied in this case, the experience of the Managing partner can be counted as the experience of the firm itself. Therefore, the 4th respondent satisfied the experience prescribed in Ext.P1.

6. In so far as the 3rd respondent is concerned, the contention raised is that 3rd respondent had not produced a consent letter from the landlord of the show room along with the bid submitted in response to Ext.P1. Yet another contention is that, the 3rd respondent did not satisfy the experience requirement prescribed in Ext.P1. In so far as the requirement of submission of consent letter is concerned, on perusal of letter of intent issued by the BSNL, it is seen that the letter of consent need be produced within the time specified in the letter of intent. Therefore, even if it is true that such a consent was not submitted along with the bid document, that would not have rendered the bid submitted defective in any manner.

7. In so far as the contention that the 3rd respondent is also inexperienced to respond to Ext.P1, apart from making a vague averment in this regard, the petitioner has not produced any supporting material to sustain the plea. On the materials available, the 3rd respondent cannot be held to be ineligible in any manner to respond to Ext.P1.

Thus the grounds on which selection of respondents 3 and 4 has been challenged by the petitioner have no substance and the writ petition is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp